

*JFW/AFB3765*

Docket No.: 1966/152

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicant : Joseph R. Habert  
Serial Number : 10/632,642  
Filing Date : August 1, 2003  
Title : DECORATIVE SOCKS WITH THREE  
DIMENSIONAL ORNAMENTS AND  
RELATED INDICIA  
Examiner : Alyssa L. Hoey  
Group Art Unit : 3765

**RESPONSE TO FINAL REJECTION UNDER 37 C.F.R. §1.116**

Mail Stop Amendment  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

SIR:

In response to the outstanding Office Action mailed November 17, 2004, in which all of the claims were finally rejected as being obvious over US 2004/0187193 (a published patent application filed by Cohen) in view of U.S. Patent No. 5,323,545 (Hirano), applicant respectfully submits the accompanying Declaration by Inventor

Under 37 C.F.R. §1.116 to antedate the Cohen reference.

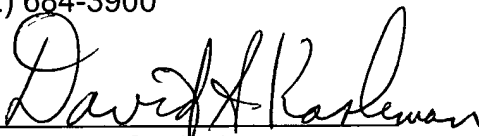
Briefly, the Cohen reference was published on September 30, 2004, based on an application (Serial No.10/395,464) filed on March 25, 2003. Applicant invented the subject matter claimed herein prior to the filing date of the Cohen reference. In support, applicant submits the declaration of Joseph R. Habert, the sole inventor herein, in which he states that he reduced to practice, and thereby completed, the subject matter claimed as the invention prior to March 25, 2003, and that those acts took place in the United States. In particular, Habert ordered and received production samples of at least two styles of hosiery embodying the claimed invention in the Fall of 2002 (Habert Declaration, ¶¶ 5 and 6). The Exhibits to the Habert Declaration show unequivocally that hosiery embodying the invention actually existed and was constructed prior to March 25, 2003.

It is respectfully submitted that the accompanying Declaration and its Exhibits meet the requirements of 37 C.F.R. §1.131, and that, accordingly, the Cohen reference is not prior art vis-à-vis the present invention. Since Cohen is not a proper reference, it must be withdrawn, and applicant respectfully submits that without the Cohen reference upon which the Examiner principally relied, the rejection of the claims under 35 U.S.C. §103 cannot stand. Accordingly, the claims must be allowed, and further favorable action in connection with this patent application is earnestly solicited.

The Examiner is invited to contact the undersigned attorney by telephone if it will advance the prosecution of this case.

Respectfully submitted,

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By:   
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Dated: New York, New York  
February 16, 2005

#### CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as First Class Mail in an envelope addressed to Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450, on:

Date of Deposit February 16, 2005

David S. Kashman; Reg. No. 28,725  
(Name of applicant, assign or Registered Representative)

  
(Signature)

February 16, 2005  
(Date of Signature)